REMARKS

This is a full and timely response to the non-final Official Action mailed **August 28, 2006**. Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

Claim Status:

Claims 21-29, 32-36 and 55-59 have been withdrawn under the imposition of a previous Restriction Requirement. To expedite the prosecution of this application, these claims have been cancelled by the present paper. The withdrawn claims are cancelled without prejudice or disclaimer. Applicant reserves the right to file any number of continuation or divisional applications to the withdrawn claims or to any other subject matter described in the present application.

Claims 1-20, 30-31, 37-40 were cancelled previously without prejudice or disclaimer. By the forgoing amendment, various claims have been amended, but no other claims are added or cancelled. Thus, claims 41-54 are currently pending for further action.

35 U.S.C. § 112, Second Paragraph:

The recent Office Action rejected claims 41-48, 50 and 51 35 U.S.C. § 112, second paragraph, due to a number of indicated informalities. These claims have been carefully reviewed in light of the Examiner's comments and amended for clarity. Following this amendment, all the remaining claims are believed to be in compliance with 35 U.S.C. § 112 and notice to that effect is respectfully requested.

Applicant notes that all the amendments made to the claims in this regard are made merely to clarify the language of the claims as requested by the Examiner. These amendments are not intended to, and do not, narrow or alter the scope of the claims in any degree.

Prior Art:

Claims 41-48 were rejected as anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 5,928,160 to Clark et al. ("Clark"). For at least the following reasons, this rejection is respectfully traversed.

Claim 41 recites:

> Apparatus for treating tinnitus sufferers comprising
> a portable record member,
> at least one audio recording track on said record member,
> a succession of signal recordings in said at least one recording track all at a predetermined audio frequency, *the recordings being in a phase shift sequence, such that the successive signal recordings are at successive phase shifts* and each occupies a predetermined time along the recording track, *the sum of the phase shifts occupying at least a half wavelength at said predetermined frequency.*

(Emphasis added).

In contrast, Clark does not teach or suggest an apparatus for treating tinnitus sufferers. The Clark device does not have any such purpose or capability. Rather, Clark describes a "home hearing test system and method." (Clark, title).

The Clark home hearing test device does not include at least one audio recording track that contains a succession of phase shifted signal recordings at a common predetermined frequency, where the sum of the phase shifts occupy at least a half wavelength of the predetermined frequency. Applicant's specification describes this subject matter and how it may be used to treat tinnitus.

Clark, on the other hand, does not even mention a series of phase-shifted signals at a single predetermined frequency. Clark does not teach or suggest such phase-shifted signals recorded on a portable record member such that the record member can then be used to treat tinnitus. Clark does not teach or suggest any of the subject matter of claim 41.

"A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. For at least these reasons, the rejection based on Clark of claim 41 and its dependent claims should be reconsidered and withdrawn.

Claim 47 recites:

> Apparatus for treating tinnitus comprising
> first means for applying to a tinnitus sufferer a first sound at a selected frequency,
> second means for thereafter applying to the tinnitus sufferer a succession of additional sounds at the selected frequency, *each such additional sound being phase shifted with respect to a prior sound in the succession, wherein phases of said succession of sounds are incrementally spaced over at least a half wavelength at the selected frequency.*

(Emphasis added).

As demonstrated above, Clark utterly fails to teach or suggest means for applying sounds to a tinnitus sufferer where each additional sound is phase shifted with respect to a prior sound in the succession, where the phases of the successive sounds are incrementally spaced over at least a half wavelength of the selected frequency. Clark does not teach or suggest any such subject matter.

"A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. For at least these reasons, the rejection based on Clark of claim 47 and its dependent claims should be reconsidered and withdrawn.

Claims 49-54 were rejected as anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 4,049,930 to Fletcher et al. ("Fletcher"). For at least the following reasons, this rejection is respectfully traversed.

Claim 49 recites:

> Apparatus for treating tinnitus comprising
> a sound generator for producing sound at a selected audio frequency, and amplitude, and
> a phase shift network for *shifting the phase of the produced sound at regular intervals, so that the sound is at one phase for a selected time period, and then shifts in phase for each of successive intervals thereafter.*

(Emphasis added).

In contrast, Fletcher does not teach or suggest an apparatus for treating tinnitus. Rather, Fletcher teaches a hearing aid malfunction detection system. (Fletcher, title).

Fletcher further does not teach or suggest the claimed "phase shift network for shifting the phase of the produced sound at regular intervals." The Fletcher device does include a phase shift network (48, Fig. 2). However, this phase shift network (48) does not shift the phase of a produced sound at regular intervals to treat tinnitus as claimed.

Rather, the phase shift network (48) taught by Fletcher is merely for facilitating the comparison of a reference signal with a test signal when testing a hearing aid. Fletcher expressly

teaches "phase shift network means for adjusting the phase of said reference signal relative to said test signal," "so that said reference signal and said test signal processed by a hearing aid without malfunctions will be identical in frequency, amplitude and phase." (Fletcher, claim 12). According to Fletcher, "calibration adjustments are provided at the signal attenuator 42 to adjust the test signal input to the amplifier 12, by the potentiometer 46 to adjust the voltage level applied at the test signal input to the differential amplifier 47, and in the phase shift network 48 to adjust the phase of the reference signal relative to that of the test signal as processed by the hearing aid amplifier 12." (Fletcher, col. 6, lines 57-63).

Thus, Fletcher does not ever teach or suggest the claimed "phase shift network for *shifting the phase of the produced sound at regular intervals*." (Emphasis added). Fletcher has nothing to do with the claimed subject matter. "A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. For at least these reasons, the rejection based on Fletcher of claim 49 and its dependent claims should be reconsidered and withdrawn.

Conclusion:

For the forcgoing reasons, the present application is thought to be clearly in condition for allowance. Accordingly, favorable reconsideration of the application in light of these remarks is courtcously solicited. If any fees are owed in connection with this paper that have not been elsewhere authorized, authorization is hereby given to charge those fees to Deposit Account 18-0013 in the name of Rader, Fishman & Grauer PLLC. If the Examiner has any comments or suggestions which could placc this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

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I hereby certify that this correspondence is being transmitted to the Patent and Trademark Office facsimile number 571-273-8300 on November 28, 2006. Number of Pages: 15

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